SUPREME COURT OF THE UNITED STATES.

No. 82.

WILLIAM M. GWIN, MARSHAL, &c., PL'FF IN ERROR,

VERSUS

BUCHANAN, HAGAN & CO., FOR THE USE OF WM. HOLLIDAY & CO.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE DISTRICT OF MISSISSIPPI.

Pleas before the Honorable Samuel J. Gholson, District Judge of the United States, at a Circuit Court of the United States held at the town of Jackson, in and for the Ninth Circuit and Southern District of Mississippi, at the May term, in the year of our Lord one thousand eight hundred and forty :

BUCHANAN, HAGAN & Co., use, &c.
vs.
WILLIAM M. GWIN.

Be it remembered, that, at a Circuit Court of the United States begun and held at the town of Jackson, in and for the Southern District aforesaid, on the first Monday of May, in the year of our Lord one thousand eight hundred and forty, came Buchanan, Hagan & Co., for the use of William Holliday & Co., by Harrison and Holt, their attorneys, and moved the court here for a judgment against William M. Gwin, Marshal of the said Southern District of Mississippi, according to the statute in such case made and provided, for the amount of an execution in the name of Buchanan, Hagan & Co., use of Wm. Holliday & Co., against Gwin and Ballance and sureties, for the sum of $2,679 88-100, with interest from the 27th day of May, 1839, till paid, and $78 68-100 costs. Issued the 19th day of December, 1839; returnable to the first Monday in May, 1840; collected by him and not paid over upon demand made by plaintiffs' attorney.

[REC. LXXXII. 1842.]

And now, at this day, to wit: at a Circuit Court of the United States held at the town of Jackson, in and for the Ninth Circuit and District aforesaid, at the same term first herein mentioned, to wit, on the twenty-seventh day of May, in the year of our Lord one thousand eight hundred and forty, came as well the plaintiffs, Buchanan, Hagan & Co., for the use of William Holliday & Co., by their attorneys aforesaid, as the said William M. Gwin, Marshal as aforesaid, by J. S. & W. Yerger, his attorneys, and it appearing to the court that the said William M. Gwin hath had due notice of the said motion; and thereupon the parties aforesaid, by their said attorneys, being fully heard, and the court being fully advised of and concerning the said motion, doth order that the same be sustained.

Therefore, it is considered by the court, that the said Buchanan, Hagan & Co., for the use of William *Holloway*, recover against the said William M. Gwin, Marshal of the Southern District of Mississippi, the sum of two thousand eight hundred and ninety-four dollars and twenty-seven cents; being the amount of the before recited execution, including interest thereon to this date, and the said sum of seventy-eight dollars and sixty-eight cents, costs.

Bill of Exceptions.

Be it remembered, that on the trial of the motion, which is here introduced, marked X, (see above copied,) against William M. Gwin, for judgment for not paying over the money collected on the execution in the above case, the fi. fa., with the return thereon, was read to the court, and is made a part hereof, marked A, in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Southern District of Mississippi, ss:

The President of the United States to the Marshal of the Southern District of Mississippi, greeting:

Whereas, at the May term, 1839, of the Circuit Court of the United States for said district, George Buchanan, John Hagan, Jr., and Edward Whittlesey, (under the firm of Buchanan, Hagan, & Co.) for the use of William Holliday & Co., recovered judgment against Ephraim Gwin and James Ballance for the sum of twenty-six hundred and seventy-nine 88-100 dollars, with interest thereon at the rate of 8 per centum per annum, from the 27th day of May, A. D. 1839, until paid, together with costs and charges by said plaintiffs in and about their said suit in that behalf expended, whereof the said defendants were convicted, as appears to us of record: And whereas, on the 28th day of June, A. D. 1839, an

execution of fieri facias issued from our said court, directed to the marshal of said district, for the amount of said judgment, interest, and costs as aforesaid; which execution was levied on certain property of said defendants, which said property was suffered to remain in possession of said defendants upon executing a forthcoming bond according to law, with Lewis Enitt and Arthur McCracken, as security; which said bond was returned to our said court at the November term thereof, A. D. 1839, by the marshal aforesaid, "forfeited," and thereby has the force and effect of a judgment, according to the statute in such case made and provided, as well against the said sureties as against the defendants to said original execution for said interest and costs:

Now, therefore, you are hereby commanded, that of the goods and chattels, lands and tenements, of the said Ephraim Gwin, James Ballance, Lewis Enitt, and Arthur McCracken, late of your district, you cause to be made the amount of the said judgment, interest, and costs, so recovered as aforesaid; also, the sum of seventy-eight 68-100 dollars, including the costs accrued since the emanation of said execution; and that you have the said sums of money before our said circuit court at a term to be held on the first Monday of May next, to render to said plaintiffs; and have also then and there this writ.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, at Jackson, the [SEAL] first Monday of November, A. D. 1839, and in the 64th year of the Independence of the United States.

Issued the 19th day of December, 1839.

WM. BURNS, *Clk.*

(Endorsed.)

No security of any kind is to be taken.

WM. BURNS, *Clk.*

Marshal's return.

"Satisfied in full on the third day of April, 1840.

W. M. GWIN, *Marshal.*

Per T. M. FERGUSON, *D. Marshal.*"

It was also proved, that the amount of said execution had been collected and tendered to said plaintiffs' attorney at the present term of this court, when he demanded the same in the following funds, to wit: The Treasury Note of the United States for one thousand dollars, and the balance in post notes of the Mississippi Union Bank, due in May and April, 1840, with fifteen per cent. added for exchange; which were refused by the plffs' attorney.

It was also proved, that neither the plaintiffs nor their attorneys had made any demand of said money previous to the term of the court; and that the deputy, who had collected the money, resided between sixty or seventy miles from the place of residence of plffs' atto's.

A letter from the pltffs' attorneys to the deputy marshal, who had the execution in hand, was read, which is made a part hereof, marked B, in these words, to wit:—

March 23rd, 1840.

DEAR SIR: In the case of Buchanan, Hagan & Co., use of Wm. Holliday & Co., *vs.* Gwin & Ballance, we are authorised to receive one thousand dollars in United States' Treasury Notes, and the balance in post of the Union Bank, maturing May and April, 1840, *adding on the post notes fifteen per cent. for exchange.* This was what Mr. Gwin proposed to us, and the plaintiff directs us to accede to the proposition; *provided, the payment be made to us without delay*, in order that the funds may be remitted before any further depreciation shall occur. You will please communicate this to the parties, at the earliest moment.

Very respectfully,
Your ob't servants,
HARRISON & HOLT.

It also appeared in proof, that the post notes of the Mississippi Union Bank continued rapidly to depreciate from the time of their receipt until the meeting of the court; that said deputy marshal did not notify pltffs, or their attorneys, of the receipt of said money; that Gwin, the marshal, knew nothing of the instructions given pltffs' atto's, nor of the collection of the money, until the meeting of the court. Mr. Ferguson, the deputy marshal, proved that he, upon the receipt of the money, had started to Vicksburg to pay over the money, but failed to go down, as he understood that some negroes, against which he had executions, were being removed from the State, and he had to start for them, to prevent their removal; that there was a mail twice a week from the place of his residence to Vicksburg. This being all the evidence on said motion, the defendant, William M. Gwin, by his attorneys, objected to any judgment being entered against him upon said motion; but said objection was overruled, and judgment given against said William M. Gwinn for the amount of said judgment and interest, at the rate of 8 per centum per annum, until the 3d day of April, 1840; to which opinions of the court, in overruling said objection and giving judgment, the defendant, William M. Gwin, by his attorneys, excepts, and prays that this, his bill of exceptions, be signed, sealed, enrolled, and made a part of the record in said cause; which is done accordingly.

S. J. GHOLSON, [SEAL.]

Whereupon, the said William M. Gwin, Marshal of the Southern District of Mississippi, prays a writ of error from the judgment aforesaid, to the Supreme Court of the United States; which is granted, upon his entering into bond conditioned according to law, with Jacob S. Yerger and John B. Forrester, his securities therein, who are approved by the court.

J. McKINLEY,
One of the Associate Justices of the Supreme Court of the United States.

UNITED STATES OF AMERICA,
Southern District of Mississippi, Circuit Court, U. S., sct:

I, William Burns, Clerk of said Court, do hereby certify that the foregoing pages contain a true, full, and complete transcript of the record in a certain motion lately determined in said court, between the parties therein named, as fully and completely as the same remains of record in said office.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said court, at Jackson, this 24th day of April, A. D. 1841.
[SEAL.]

WM. BURNS, *Clerk.*

Filed 10th January, 1842.